

AMENDED IN SENATE APRIL 17, 2007

Senate Constitutional Amendment

No. 4

Introduced by ~~Senator Ashburn~~ *Senators Ashburn and Migden*

January 18, 2007

Senate Constitutional Amendment No. 4—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 2 of Article XIII A thereof, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SCA 4, as amended, Ashburn. Property tax: new construction exclusion: seismic retrofitting.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, “full cash value” is defined as the assessor’s valuation of real property as shown on the 1975–76 tax bill under “full cash value” or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change of ownership has occurred.

The California Constitution excludes from classification as “newly constructed” the portion of reconstruction or improvement to a structure constructed of unreinforced masonry bearing wall construction, that is necessary to comply with any local ordinance relating to seismic safety, during the first 15 years following the reconstruction or improvement. The California Constitution also authorizes the Legislature to exclude from classification as “newly constructed” the construction or installation in existing buildings of certain seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies.

This measure would instead exclude from the definition of “newly constructed” the portion of an existing structure that consists of the construction or reconstruction of seismic retrofitting components, as defined by the Legislature. This measure would delete the existing exclusion for structures constructed of unreinforced masonry bearing wall construction, and the existing grant of authority to the Legislature to exclude certain seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring,* That the
2 Legislature of the State of California at its 2007–08 Regular
3 Session commencing on the fourth day of December 2006,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California, that the
6 Constitution of the State be amended as follows:

7 That Section 2 of Article XIII A thereof is amended to read:

8 SEC. 2. (a) The “full cash value” means the county assessor’s
9 valuation of real property as shown on the 1975–76 tax bill under
10 “full cash value” or, thereafter, the appraised value of real property
11 when purchased, newly constructed, or a change in ownership has
12 occurred after the 1975 assessment. All real property not already
13 assessed up to the 1975–76 full cash value may be reassessed to
14 reflect that valuation. For purposes of this section, “newly
15 constructed” does not include real property that is reconstructed
16 after a disaster, as declared by the Governor, where the fair market
17 value of the real property, as reconstructed, is comparable to its
18 fair market value prior to the disaster. For purposes of this section,
19 the term “newly constructed” does not include that portion of an
20 existing structure that consists of the construction or reconstruction
21 of seismic retrofitting components, as defined by the Legislature.

22 However, the Legislature may provide that, under appropriate
23 circumstances and pursuant to definitions and procedures
24 established by the Legislature, any person over the age of 55 years
25 who resides in property that is eligible for the homeowner’s
26 exemption under subdivision (k) of Section 3 of Article XIII and
27 any implementing legislation may transfer the base year value of
28 the property entitled to exemption, with the adjustments authorized
29 by subdivision (b), to any replacement dwelling of equal or lesser

1 value located within the same county and purchased or newly
2 constructed by that person as his or her principal residence within
3 two years of the sale of the original property. For purposes of this
4 section, “any person over the age of 55 years” includes a married
5 couple one member of which is over the age of 55 years. For
6 purposes of this section, “replacement dwelling” means a building,
7 structure, or other shelter constituting a place of abode, whether
8 real property or personal property, and any land on which it may
9 be situated. For purposes of this section, a two-dwelling unit shall
10 be considered as two separate single-family dwellings. This
11 paragraph shall apply to any replacement dwelling that was
12 purchased or newly constructed on or after November 5, 1986.

13 In addition, the Legislature may authorize each county board of
14 supervisors, after consultation with the local affected agencies
15 within the county’s boundaries, to adopt an ordinance making the
16 provisions of this subdivision relating to transfer of base year value
17 also applicable to situations in which the replacement dwellings
18 are located in that county and the original properties are located
19 in another county within this State. For purposes of this paragraph,
20 “local affected agency” means any city, special district, school
21 district, or community college district that receives an annual
22 property tax revenue allocation. This paragraph applies to any
23 replacement dwelling that was purchased or newly constructed on
24 or after the date the county adopted the provisions of this
25 subdivision relating to transfer of base year value, but does not
26 apply to any replacement dwelling that was purchased or newly
27 constructed before November 9, 1988.

28 The Legislature may extend the provisions of this subdivision
29 relating to the transfer of base year values from original properties
30 to replacement dwellings of homeowners over the age of 55 years
31 to severely disabled homeowners, but only with respect to those
32 replacement dwellings purchased or newly constructed on or after
33 the effective date of this paragraph.

34 (b) The full cash value base may reflect from year to year the
35 inflationary rate not to exceed 2 percent for any given year or
36 reduction as shown in the consumer price index or comparable
37 data for the area under taxing jurisdiction, or may be reduced to
38 reflect substantial damage, destruction, or other factors causing a
39 decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term “newly constructed” does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner’s exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(d) For purposes of this section, the term “change in ownership” does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. This subdivision applies to any property acquired after March 1, 1975, but affects only those assessments of that property that occur after the provisions of this subdivision take effect.

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

1 (2) Except as provided in paragraph (3), this subdivision applies
2 to any comparable replacement property acquired or newly
3 constructed on or after July 1, 1985, and to the determination of
4 base year values for the 1985–86 fiscal year and fiscal years
5 thereafter.

6 (3) In addition to the transfer of base year value of property
7 within the same county that is permitted by paragraph (1), the
8 Legislature may authorize each county board of supervisors to
9 adopt, after consultation with affected local agencies within the
10 county, an ordinance allowing the transfer of the base year value
11 of property that is located within another county in the State and
12 is substantially damaged or destroyed by a disaster, as declared
13 by the Governor, to comparable replacement property of equal or
14 lesser value that is located within the adopting county and is
15 acquired or newly constructed within three years of the substantial
16 damage or destruction of the original property as a replacement
17 for that property. The scope and amount of the benefit provided
18 to a property owner by the transfer of base year value of property
19 pursuant to this paragraph shall not exceed the scope and amount
20 of the benefit provided to a property owner by the transfer of base
21 year value of property pursuant to subdivision (a). For purposes
22 of this paragraph, “affected local agency” means any city, special
23 district, school district, or community college district that receives
24 an annual allocation of ad valorem property tax revenues. This
25 paragraph applies to any comparable replacement property that is
26 acquired or newly constructed as a replacement for property
27 substantially damaged or destroyed by a disaster, as declared by
28 the Governor, occurring on or after October 20, 1991, and to the
29 determination of base year values for the 1991–92 fiscal year and
30 fiscal years thereafter.

31 (f) For the purposes of subdivision (e):

32 (1) Property is substantially damaged or destroyed if it sustains
33 physical damage amounting to more than 50 percent of its value
34 immediately before the disaster. Damage includes a diminution in
35 the value of property as a result of restricted access caused by the
36 disaster.

37 (2) Replacement property is comparable to the property
38 substantially damaged or destroyed if it is similar in size, utility,
39 and function to the property that it replaces, and if the fair market

1 value of the acquired property is comparable to the fair market
2 value of the replaced property prior to the disaster.

3 (g) For purposes of subdivision (a), the terms “purchased” and
4 “change in ownership” do not include the purchase or transfer of
5 real property between spouses since March 1, 1975, including, but
6 not limited to, all of the following:

7 (1) Transfers to a trustee for the beneficial use of a spouse, or
8 the surviving spouse of a deceased transferor, or by a trustee of
9 such a trust to the spouse of the trustor.

10 (2) Transfers to a spouse that take effect upon the death of a
11 spouse.

12 (3) Transfers to a spouse or former spouse in connection with
13 a property settlement agreement or decree of dissolution of a
14 marriage or legal separation.

15 (4) The creation, transfer, or termination, solely between
16 spouses, of any coowner’s interest.

17 (5) The distribution of a legal entity’s property to a spouse or
18 former spouse in exchange for the interest of the spouse in the
19 legal entity in connection with a property settlement agreement or
20 a decree of dissolution of a marriage or legal separation.

21 (h) (1) For purposes of subdivision (a), the terms “purchased”
22 and “change in ownership” do not include the purchase or transfer
23 of the principal residence of the transferor in the case of a purchase
24 or transfer between parents and their children, as defined by the
25 Legislature, and the purchase or transfer of the first one million
26 dollars (\$1,000,000) of the full cash value of all other real property
27 between parents and their children, as defined by the Legislature.
28 This subdivision applies to both voluntary transfers and transfers
29 resulting from a court order or judicial decree.

30 (2) (A) Subject to subparagraph (B), commencing with
31 purchases or transfers that occur on or after the date upon which
32 the measure adding this paragraph becomes effective, the exclusion
33 established by paragraph (1) also applies to a purchase or transfer
34 of real property between grandparents and their grandchild or
35 grandchildren, as defined by the Legislature, that otherwise
36 qualifies under paragraph (1), if all of the parents of that grandchild
37 or those grandchildren, who qualify as the children of the
38 grandparents, are deceased as of the date of the purchase or transfer.

39 (B) A purchase or transfer of a principal residence shall not be
40 excluded pursuant to subparagraph (A) if the transferee grandchild

1 or grandchildren also received a principal residence, or interest
2 therein, through another purchase or transfer that was excludable
3 pursuant to paragraph (1). The full cash value of any real property,
4 other than a principal residence, that was transferred to the
5 grandchild or grandchildren pursuant to a purchase or transfer that
6 was excludable pursuant to paragraph (1), and the full cash value
7 of a principal residence that fails to qualify for exclusion as a result
8 of the preceding sentence, shall be included in applying, for
9 purposes of subparagraph (A), the ~~one million dollar~~
10 *one-million-dollar* (\$1,000,000) full cash value limit specified in
11 paragraph (1).

12 (i) (1) Notwithstanding any other provision of this section, the
13 Legislature shall provide with respect to a qualified contaminated
14 property, as defined in paragraph (2), that either, but not both, of
15 the following apply:

16 (A) (i) Subject to the limitation of clause (ii), the base year
17 value of the qualified contaminated property, as adjusted as
18 authorized by subdivision (b), may be transferred to a replacement
19 property that is acquired or newly constructed as a replacement
20 for the qualified contaminated property, if the replacement real
21 property has a fair market value that is equal to or less than the
22 fair market value of the qualified contaminated property if that
23 property were not contaminated and, except as otherwise provided
24 by this clause, is located within the same county. The base year
25 value of the qualified contaminated property may be transferred
26 to a replacement real property located within another county if the
27 board of supervisors of that other county has, after consultation
28 with the affected local agencies within that county, adopted a
29 resolution authorizing an intercounty transfer of base year value
30 as so described.

31 (ii) This subparagraph applies only to replacement property that
32 is acquired or newly constructed within five years after ownership
33 in the qualified contaminated property is sold or otherwise
34 transferred.

35 (B) In the case in which the remediation of the environmental
36 problems on the qualified contaminated property requires the
37 destruction of, or results in substantial damage to, a structure
38 located on that property, the term “new construction” does not
39 include the repair of a substantially damaged structure, or the
40 construction of a structure replacing a destroyed structure on the

1 qualified contaminated property, performed after the remediation
2 of the environmental problems on that property, provided that the
3 repaired or replacement structure is similar in size, utility, and
4 function to the original structure.

5 (2) For purposes of this subdivision, “qualified contaminated
6 property” means residential or nonresidential real property that is
7 all of the following:

8 (A) In the case of residential real property, rendered
9 uninhabitable, and in the case of nonresidential real property,
10 rendered unusable, as the result of either environmental problems,
11 in the nature of and including, but not limited to, the presence of
12 toxic or hazardous materials, or the remediation of those
13 environmental problems, except where the existence of the
14 environmental problems was known to the owner, or to a related
15 individual or entity as described in paragraph (3), at the time the
16 real property was acquired or constructed. For purposes of this
17 subparagraph, residential real property is “uninhabitable” if that
18 property, as a result of health hazards caused by or associated with
19 the environmental problems, is unfit for human habitation, and
20 nonresidential real property is “unusable” if that property, as a
21 result of health hazards caused by or associated with the
22 environmental problems, is unhealthy and unsuitable for
23 occupancy.

24 (B) Located on a site that has been designated as a toxic or
25 environmental hazard or as an environmental cleanup site by an
26 agency of the State of California or the federal government.

27 (C) Real property that contains a structure or structures thereon
28 prior to the completion of environmental cleanup activities, and
29 that structure or structures are substantially damaged or destroyed
30 as a result of those environmental cleanup activities.

31 (D) Stipulated by the lead governmental agency, with respect
32 to the environmental problems or environmental cleanup of the
33 real property, not to have been rendered uninhabitable or unusable,
34 as applicable, as described in subparagraph (A), by any act or
35 omission in which an owner of that real property participated or
36 acquiesced.

37 (3) It shall be rebuttably presumed that an owner of the real
38 property participated or acquiesced in any act or omission that
39 rendered the real property uninhabitable or unusable, as applicable,

1 if that owner is related to any individual or entity that committed
2 that act or omission in any of the following ways:

3 (A) Is a spouse, parent, child, grandparent, grandchild, or sibling
4 of that individual.

5 (B) Is a corporate parent, subsidiary, or affiliate of that entity.

6 (C) Is an owner of, or has control of, that entity.

7 (D) Is owned or controlled by that entity.

8 If this presumption is not overcome, the owner shall not receive
9 the relief provided for in subparagraph (A) or (B) of paragraph
10 (1). The presumption may be overcome by presentation of
11 satisfactory evidence to the assessor, who shall not be bound by
12 the findings of the lead governmental agency in determining
13 whether the presumption has been overcome.

14 (4) This subdivision applies only to replacement property that
15 is acquired or constructed on or after January 1, 1995, and to
16 property repairs performed on or after that date.

17 (j) Unless specifically provided otherwise, amendments to this
18 section adopted prior to November 1, 1988, are effective for
19 changes in ownership that occur, and new construction that is
20 completed, after the effective date of the amendment. Unless
21 specifically provided otherwise, amendments to this section
22 adopted after November 1, 1988, are effective for changes in
23 ownership that occur, and new construction that is completed, on
24 or after the effective date of the amendment.